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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/614,782

07/09/2003

Hugh H. Trout III

23660-00654

8569

25243 7590 07/13/2007  
KELLEY DRYE & WARREN LLP  
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WASHINGTON, DC 20007

EXAMINER

EREZO, DARWIN P

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

07/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

SP

<b>Notice of Abandonment</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/614,782	TROUT, HUGH H.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Darwin P. Erezzo	3731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 05 May 2005.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☒ A proposed reply was received on 02 September 2005, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
 (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
 The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:  
 See Continuation Sheet

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.


Item 7 - Other reasons for holding abandonment: The Applicant's representative had previously contacted the Examiner regarding the Advisory action mailed on 1/27/06. The Finality of the Office action mailed on 5/5/05 was questioned and whether the mailing of the Advisory action was proper. Since an Advisory action was already mailed out, a response from the Applicant was needed to change the status of the application. However, no reply has been received.

Furthermore, after reviewing the prosecution history of the application, the Examiner has determined that the Finality of the Office action was proper. The following provides a timeline for communication between the Office and the Applicant:

- A Non-Final Office action was mailed on 6/14/04.
- An amendment was filed on 11/15/04, in which the claims were amended.
- A First Final Office action was mailed on 1/11/05 in response to the amendment above.
- A Request for Reconsideration was filed on 2/22/05 disputing the rejections of the First Final Office action.
- An Advisory Action was mailed on 3/21/05.
- An Interview was conducted on 4/19/05 between the Applicant's representative and Examiners Pantuck and Nguyen. It was determined that the rejections in the First Final Office action would be withdrawn.
- A Second Final Office action was mailed on 5/5/05.

Since the First Final Office action was withdrawn, the next Office action type would be determined by what was filed prior to that action. As shown above, the applicant had previously provided an amendment to the claims on 11/15/04, which was the last communication prior to the First Final Office action. Therefore, the next Office action would STILL respond to the changes in that amendment. As such, the Second Final Office action, which contained new grounds of rejection, is proper because it was necessitated by the amendments filed on 11/15/04.

Since the statutory period of reply has expired, the application is now abandoned. The applicant is suggested to file a petition for unintentional abandonment and to re-file the Amendment of 9/2/05 as an RCE in order to reopen the prosecution.

  
(JACKIE) TAN-UYEN HO  
SUPERVISORY PATENT EXAMINER  
7/09/07